

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bargnes et al. Confirmation No.: 4629
Serial No.: 10/705,359 Group Art Unit: 3623
Filed: November 10, 2003 Examiner: Chong Cruz, Nadja N.

Attorney Docket No.: IN-5398CIP

Title: METHOD OF DETERMINING AN EFFICIENCY OF A
REPAIR PROCESS

Mail Stop Appeal Brief – Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

The following Reply Brief is being filed in response to the Examiner's Answer mailed on October 14, 2009.

Applicant thanks the Examiner for the thorough answer. However, the Applicant continues to contend that the Examiner is misinterpreting the references and has not been able to uncover a system that **tracks** when a repair shop opens and closes for each day during vehicle production start and finish periods as defined in claim 1 of the subject application. As such, none of the references uncovered determine a total shop production hours as defined in claim 1 of the subject application, which in turn means that none of the references uncovered calculate a production process efficiency as defined in claim 1 of the subject application.

To be clear, the Applicant recognizes that a repair shop may be generally aware of when the shop is scheduled to open and close. However, this basic knowledge is NOT equivalent to **tracking** this information relative to vehicle production start and finish periods to determine a total shop production hours and then using the total shop production hours to calculate a production process efficiency.

Regarding McGuire, the Examiner relies on a discussion surrounding a Daily Recap as a foundation that McGuire calculates a total shop production hours as defined in claim 1 of the subject application. Applicant respectfully submits that the Examiner's reasoning is flawed and distorts the type of information that the Daily Recap provides. As outlined at column 9, lines 50-60 in McGuire, the Daily Recap relates to a Work Order In Progress for a particular **vehicle** and does NOT include any information about the shop, such as the hours the shop opens and closes. As with all of the other prior art cited by the Examiner, McGuire is particularly focused on the **vehicle** NOT the **shop**, see column 1, lines 8-12 and column 2, lines 63-66.

It is noted that the daily recap can be performed at the end of a working day or at a beginning of the next working day, but just because a user may produce their report at these times does NOT mean that the Daily Recap tracks when the repair shop opens and closes. In fact, if this were the case, then the Daily Recap would be REQUIRED to be run at both the beginning of a working day AND the end of a working day, not as a proposed time or in the alternative. Further, there is no correlation between when the shop opens and closes and the vehicle production start and finish periods as required by claim 1 of the subject application. Also, the fact that McGuire mentions that the "system permits the operator to produce a tally of daily operations and work in

progress to assist in maintaining and efficient service operation” in no way implies any kind of tracking of when the shop opens and closes as proposed by the Examiner. Again, all of this information relates to the **vehicle**. Perhaps the largest leap of faith is when the Examiner concludes that the total shop product hours is disclosed because McGuire states “a daily recap display ‘work in progress, a monthly summary of work performed’”. This is totally counter to claim 1 of the subject application that requires a monitoring of when the shop opens and closes between the vehicle production start period and the vehicle production finish period - NOT monitoring work in progress or a monthly summary.

Turning to Baldwin, the Applicant’s detailed arguments set forth in the Appeal Brief remain uncontested. The Examiner doesn’t even attempt to counter the argument that Baldwin fails to disclose any hours related to the shop. The system in Baldwin (the DLE) calculates hours of the **work only** and does NOT provide any measurement or calculation taking into consideration the hours of the shop. The Examiner simply repeats the previous rejection that the “‘DLE for a repair shop is the total standard hours’ (e.g. estimated total labor hours) ‘for all work in the shop divided by the actual hours’ (e.g. total shop production hours)”. As discussed in detail in the Appeal Brief, the above statement by the Examiner is inaccurate. The Examiner attempts to avoid the arguments surrounding Baldwin by mentioning that McGuire discloses the total shop production hours based on when the repair shop opens and closes. As discussed above relative to McGuire, this contention is likewise inaccurate.

Another startling comment from the Examiner, which illustrates the Examiner’s confusion, is found at the end of the Grounds of Rejection section on page 37. The comment states:

[t]he hours of the shop are equivalent to the actual hours for all work in the shop because the work performed in the shop would be done during the repair shop's open hours.

This assumption is a gross oversimplification and, if used, would not provide any value to a repair shop. As discussed in paragraphs 0082-0085 and shown in Figure 13, the invention of the subject application is a unique and non-obvious method to calculate a more effective efficiency of the shop that can only be determined by calculating the total shop production hours for a particular repair period of a vehicle while taking into consideration when the shop opens and closes during that repair period.

For the reasons set forth above, the rejection of claims 1-22, 26 and 30-32 under 35 USC §103 as being unpatentable over McGuire et al. (U.S. Patent No. 4,404,639) in view of Inoue (U.S. Patent No. 5,317,503) and further in view of Baldwin et al. (Article entitled "Transfer Pricing for Air Force Depot-Level Reparables", RAND, 1998) must be withdrawn. Similarly, the rejection of claims 23-25 and 27-29 under 35 USC §103 as being unpatentable over McGuire et al. in view of Inoue in view of Baldwin et al. and further in view of Official Notice must be withdrawn.

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It is believed that no fees are presently due. However, the Commissioner is authorized to charge the Deposit Account No. 08-2789, in the name of Howard & Howard Attorneys, PLLC for any additional fees or credit the account for any overpayment.

Respectfully submitted,

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